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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,634	09/23/2003	David Stevenson Spain	465-009US	2179
22897	7590	10/19/2006	EXAMINER	
DEMONT & BREYER, LLC 100 COMMONS WAY HOLMDEL, NJ 07733			SHEDRICK, CHARLES TERRELL	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/668,634

Applicant(s)

SPAIN, DAVID STEVENSON

Examiner

Charles Shedrick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/12/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see pgs. 12-20, filed 7/24/06, with respect to claims 1-28 have been fully considered and are persuasive. The Final Rejection of claims 1-28 has been withdrawn.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 10, and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 7,116,987. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims are broader in scope and encompass the scope of the other claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,6-7, 10-13, 15-16,20-23, and 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen et al., hereinafter Chen US Patent No. 6,658,258 B1.

Consider **claim 1**, Chen teaches a method of deducing a signal strength of a first signal at a wireless terminal based on the transmit strength of a second signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35, and claims 1 and 12), that is transmitted by said wireless terminal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12); and estimating the location of said wireless terminal based on said signal strength of said first signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 2**, and **as applied to claim 1 above**, Chen teaches a method wherein deducing said signal strength of said first signal is also based on the transmitted strength of said first signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 3**, and **as applied to claim 1 above**, Chen teaches a method wherein deducing said signal strength of said first signal is also based on a signal-strength measurement for said second signal at the location where said first signal is transmitted (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 4**, and as applied to **claim 1 above**, Chen teaches a method wherein deducing the said signal strength of said first signal, is also based on an attenuation for said second signal between wireless terminal and the location where said first signal is transmitted (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 6**, and as applied to **claim 1 above**, Chen teaches a method wherein estimating the location of said wireless terminal is also based on a signal strength measurement of a third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 7**, and as applied to **claim 6 above**, Chen teaches a method wherein estimating the location of said wireless terminal is based on said signal strength of said first signal and said signal strength measurement of said third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 10**, Chen teaches a method wherein deducing said signal strength of said first signal based on a signal-strength measurement of a second signal at the location where said first signal is transmitted (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12); and estimating the location of said wireless terminal based on said signal strength of said first signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 11**, and as applied to **claim 10 above**, Chen teaches a method wherein deducing said signal strength of said first signal is also based on the transmitted strength (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 12** and as applied to **claim 10 above**, Chen teaches a method of deducing a signal strength of a first signal at a wireless terminal based on the transmit strength of a second signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12),

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that is transmitted by said wireless terminal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 13**, and as applied to **claim 10 above**, Chen teaches a method wherein deducing the said signal strength of said first signal, is also based on an attenuation (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 15**, and as applied to **claim 10 above**, Chen teaches a method wherein estimating the location of said wireless terminal is also based on a signal strength measurement of a third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 16**, and as applied to **claim 15 above**, Chen teaches a method wherein estimating the location of said wireless terminal is based on said signal strength of said first signal and said signal strength measurement of said third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 20**, Chen teaches a method of deducing a signal strength of a first signal at a wireless terminal based on the attenuation of a second signal, that is transmitted by said wireless terminal; and estimating the location of said wireless terminal based on said signal strength of said first signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 21**, and as applied to **claim 20 above**, Chen teaches a method wherein deducing said signal strength of said first signal is also based on the transmitted strength of said first signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 22**, and as applied to **claim 20 above**, Chen teaches a method wherein deducing said signal strength of said first signal is also based on a signal-strength measurement

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for said second signal at the location where said first signal is transmitted (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 23 and as applied to claim 20 above**, Chen teaches a method of deducing a signal strength of a first signal at a wireless terminal based on the transmit strength of a second signal, that is transmitted by said wireless terminal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 25, and as applied to claim 20 above**, Chen teaches a method wherein estimating the location of said wireless terminal is also based on a signal strength measurement of a third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

Consider **claim 26, and as applied to claim 25 above**, Chen teaches a method wherein estimating the location of said wireless terminal is based on said signal strength of said first signal and said signal strength measurement of said third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **5,14,19 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., hereinafter Chen US Patent No. 6,658,258 B1 in view of Dupray (U.S. Patent No. 6,249,252).

Consider **claims 5, 14, and 24** and as applied to **claims 1,10 and 20** above, Chen teaches the claimed invention except wherein estimating the location of said wireless terminal comprises pattern matching said signal strength of said first signal against a database that associates candidate locations for said wireless with predicted signal strength measurements for said first signal.

However, in analogous art, Dupray teaches wherein estimating the location of said wireless terminal **140** comprises pattern matching (**abstract**) said signal strength of said first signal against a database that associates candidate locations for said wireless with predicted signal strength measurements for said first signal (**abstract, column 5 lines 50 –65, and column 51 line 50 – column 52 line 21**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Chen to include Dupray for the purpose of improving location determination.

Consider **claim 19**, and as applied to **claim 10** above, Chen teaches the claimed invention except a method comprising removing the effects of fast fading.



However, in analogous art, Dupray teaches a method comprising removing the effects of fast fading (i.e., delay spread; random phase shift or Rayleigh Fading) (**column 2 line 56 – column 3 line 32 and column 26 lines 23-63**)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Chen to include Dupray for the purpose of improving location determination.

**Claims 8,17, and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., hereinafter Chen US Patent No. 6,658,258 B1 in view of Okanou et al. (U.S. Pub. No. US 2003/0064733 A1).

Consider **claims 8,17, and 27** and as **applied to claims 6,15, and 25**. Chen teaches a method wherein estimating the location of said wireless terminal is based on a first signal and also based on a signal strength measurement of a third signal (abstract, col. 2 lines 14-25, col. 7 line 34-col. 8 line 35 and claims 1 and 12).

However, Chen does not clearly disclose if indeed the location of said wireless terminal is based on the absolute magnitude of the difference between said signal strength of the first signal and said signal strength of the third signal.

In the same field of endeavor Okanou et al. discloses a method of estimating the location of a mobile terminal 4 (figure 1) based on the absolute value of the difference between the reception level (i.e., signal strength) of multiple signals (**abstract, paragraph 0079, and figure 5**).

Therefore it would have been obvious to a person of ordinary skill in the art to calculate the absolute value of the difference between a first signal strength and a third signal strength as

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taught by Okanou et al. in the method of Chen in order to improve the mathematical derivations of signal strength.

**Claims 9,18, and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., hereinafter Chen US Patent No. 6,658,258 B1 in view of Dupray (U.S. Patent No. 6,249,252) and further in view of Okanou et al. (U.S. Pub. No. US 2003/0064733 A1).

Consider **claims 9,18, and 28** and as applied to **claims 6,15, and 25**, Chen teaches the claimed invention except wherein estimating the location of said wireless terminal comprises generating a two-dimensional probability distribution for the location of said wireless terminal.

However, in analogous art, Dupray teaches a method wherein estimating the location of said wireless terminal **140** comprises generating a two-dimensional probability distribution for the location of said wireless terminal (i.e., incorporating location estimates based on a joint PDF)(**column 54 lines 18-37**). Chen further discloses a method wherein estimating the location of said wireless terminal is based on a first signal and also based on a signal strength measurement of a third.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Chen to include Dupray for the purpose of improving location determination.

However, Chen as modified by Dupray does not teach if indeed the location of said wireless terminal is based on the generating a two-dimensional PDF for the location of said wireless terminal based on the absolute magnitude of the difference between said signal strength of the first signal and said signal strength of the third signal.

In the same field of endeavor Okanoué et al. discloses a method of estimating the location of a mobile terminal 4 (figure 1) based on the absolute value of the difference between the reception level (i.e., signal strength) of multiple signals (**abstract, paragraph 0079, and figure 5**).

Therefore it would have been obvious to a person of ordinary skill in the art to generate a two-dimensional PDF as taught by Chen as modified Dupray based on the absolute value of the difference between a first signal strength and a third signal strength as taught by Okanoué et al. to improve the mathematical derivations of signal strength.

#### ***Conclusion***

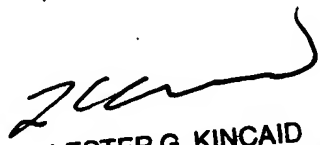
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Shedrick whose telephone number is (571)-272-8621. The examiner can normally be reached on Monday thru Friday 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kincaid Lester can be reached on (571)-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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October 15, 2006



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